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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/818,424	03/26/2001	Ashar Aziz	55218-0504	1388
29989	7590	12/16/2004	EXAMINER	
HICKMAN PALERMO TRUONG & BECKER, LLP 1600 WILLOW STREET SAN JOSE, CA 95125			GECKIL, MEHMET B	
			ART UNIT	PAPER NUMBER
			2142	

DATE MAILED: 12/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/818,424	AZIZ, ASHAR
<b>Examiner</b>	<b>Art Unit</b>	
Mehmet B. Geckil	2142	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 26 March 2001.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-40 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-40 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3.10-13.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_ .

1. Claims 1-40 are presented for examination.

2. Claims 1-40 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 12-14 of copending application Serial No. 09/863,945. Although the conflicting claims are not identical, they are not patentably distinct from each other because the difference in scope is not substantial enough.

This is a *provisional* obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bixler et al in view of admitted prior art.

5. Bixler et al (6,212,559) taught the invention substantially as claimed including a method of defining and deploying a networked computer system, comprising the steps of:

a) creating and storing a textual representation of a logical configuration of the networked computer system according to a graphical user interface (col 5, line 33 et seq; col 6, line 62 et seq and col 7, line 43 et seq (reference No. 42));

b) based on the textual representation, generating one or more commands for one or more switch devices that are interconnected to one or more computing elements and

storage devices, wherein the commands instruct the switch devices to logically connect the computing elements and storage devices into an operable computer system that conforms to the logical configuration (col 5, line 33 et seq; col 6, line 62 et seq; col 7, line 43 et seq ; col 8, line 15 et seq.)

Bixler et al did not teach creating and storing a textual representation of a logical configuration of the networked computer system according to a structured markup language but they taught according to a graphical user interface which is an obvious variation of the graphical interface provided by the structured markup language. Moreover, applicant in the specification at page 3 taught that rackspace.com provided a graphical user interface according to the markup language but applicant stated that it was directed towards generating a single server. Applicant should understand that that is a scope problem. As long as it teaches according to a markup language, applicant's using markup language becomes an obvious variation of that teaching. Moreover, base claims do not claim generating a server farm or network farm as stated in the specification rather they claim generating a single computer system which is an obvious variations of the rackspace.com teaching.

6. Examiner cannot locate some of the prior art references listed in the submitted IDSes. Examiner will cross those in the IDS forms and approve only the ones that are available in the file. Applicant may submit those in response to this office action for later consideration.

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mehmet Geckil whose telephone number is (571) 272-3894. The examiner can normally be reached on Monday through Friday from 6:30 A.M. to 3:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Jack Harvey, can be reached on (571) 272-3896.

The fax phone number for the organization where this application or proceeding is assigned is **(703) 872-9306**. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is **(703) 305-3800/4700**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

12/2/04

MEHMET B. GECKIL  
PRIMARY EXAMINER

